

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DANIEL ORTIZ LOPEZ,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondents.

Civil 09cv1118 L (WMc)
No.

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION
PURSUANT TO 28 U.S.C.
§ 2244(b)(3)(A) GATEKEEPER
PROVISION**

Petitioner, Daniel Ortiz Lopez, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis. The Court does not rule on Petitioner's request to proceed in forma pauperis because this case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

PETITION BARRED BY GATEKEEPER PROVISION

The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to this Court challenging his June 28, 2001 conviction in San Diego Superior Court case No. SCD 158082. On October 31, 2003, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in case No. 03cv2164. In that petition, Petitioner challenged his conviction in San Diego Superior Court case No. SCD 158082 as well. On May 5, 2005, this Court denied the petition on the merits. (*See* Order filed May 5, 2005 in case No. 03cv2164 JAH (BLM) [Doc. No. 21].) Petitioner appealed that determination. On October 12, 2005, the Ninth Circuit

1 denied Lopez's request for a Certificate of Appealability. (*See* Order in *Lopez v. Giurbino*, No.
2 05-55886 (9th Cir. Oct. 12, 2005).)

3 Petitioner is now seeking to challenge the same conviction he challenged in his prior
4 federal habeas petition. Unless a petitioner shows he or she has obtained an Order from the
5 appropriate court of appeals authorizing the district court to consider a successive petition, the
6 petition may not be filed in the district court. *See* 28 U.S.C. § 2244(b)(3)(A). Here, there is no
7 indication the Ninth Circuit Court of Appeals has granted Petitioner leave to file a successive
8 petition.

9 **CONCLUSION**

10 Because there is no indication Petitioner has obtained permission from the Ninth Circuit
11 Court of Appeals to file a successive petition, this Court cannot consider his Petition.
12 Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition
13 in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. **THE**
14 **CLERK OF COURT IS DIRECTED TO MAIL PETITIONER A BLANK NINTH**
15 **CIRCUIT APPLICATION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE**
16 **PETITION.**

17 **IT IS SO ORDERED.**

18 **DATED: May 27, 2009**

19 
20 **M. James Lorenz**
21 **United States District Court Judge**